

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21091
Docket Number MW-21111

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated on May 24, 25, 29, 30 and June 6, 1973 when track employees were used to perform out-of-face cross-grinding of rail ends.

(2) Welder J. E. Scates and Welder Helper D. S. McGinty each be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man-hours expended by track forces in performing the work referred to in Part (1) hereof.

OPINION OF BOARD: The dispute herein relates to track maintenance work. Petitioner asserts that Carrier improperly assigned members of a track gang to perform out-of-face cross-grinding of rail ends instead of using a welder and welder helper. Carrier characterizes the work as the use of a "slotter" which does not involve the welding process and which work was purely track maintenance and incidental to the work of a trackman.

Both parties to this dispute raised issues and contentions, which were not presented on the property, in conjunction with their submissions to this Board. In accordance with well established practice and precedent such issues may not be considered.

Petitioner relies principally on the Scope Rule of the Agreement and contends that the work involved was work customarily and historically performed by and reserved to the welding class of employees. The Organization also refers to the Grinder listing under the Welders classification in paragraph (F) of the Scope Rule. In its handling on the property, Petitioner referred to and quoted from statements from eight lead welders, welders and helpers to the effect that welding and cross-grinding of rails have always been performed by members of the welding department. Carrier asserts that only two statements were quoted on the property and none were ever submitted to Carrier; the inclusion of this new evidence in conjunction with the submission is manifestly improper. Petitioner has also cited the Seniority Rules in support of its position.

Carrier, on the property, argued that the work in question involved no welding and was not reserved to the welding class of employees exclusively. No evidence in support of these contentions was presented, giving rise to Petitioner's argument that Carrier's position was grounded on assertion rather than evidence.

The Scope Rule of the Agreement is clearly general and reserves no work, per se, to any class of employee. Since seniority rights can only be considered when the right to the work is established (see Awards 15943, 17943 and 20417), it was incumbent on Petitioner to present evidence and argument that the work was reserved exclusively to welders (and/or grinders). We cannot agree with Petitioner's contention that there was an unchallenged showing of exclusive performance by welding forces. The two statements quoted on the property cannot be construed to establish a system-wide exclusive past practice with respect to the grinding work; they do not purport to relate to anything except the particular experience of the individual signing the statement.

We have previously considered the Scope Rule of this Agreement and have characterized it as a general rule which does not define or reserve work (Awards 17538 and 17711). The burden was on Petitioner to establish by evidence the existence of a system-wide exclusive past practice; this burden of proof was not met and for this reason the Claim does not have merit (Award 19921 among many others).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1976.